

TESTIMONY RE: HB 176

For the House Judiciary Committee

Prepared by Mary Phippen, Lobbyist for the  
Montana Association of Clerks of District Court and  
The Montana Magistrates' Association

January 19, 2009

For the record, my name is Mary Phippen. I represent the Montana Association of Clerks of District Court and the Montana Magistrates' Association. While our associations do not take a position on this Bill as we do not take a position on policy, we do, however, agree with the proposed amendments to this Bill in order to allow implementation of procedures to best suit the needs of our offices and administration of the intent of the Bill.

We have submitted two (2) sets of proposed amendments and we would be satisfied with **either** set of amendments being adopted by the committee.

If you will look at the handouts that were distributed to you, I will proceed to explain the proposed amendments.

I will start with proposed amendment HB176MACDC.I. The first two amendments on Page 1, Line 25, are simply needed to strike the words "and the court" from subsection (3) in section 1 of the Bill in order to remove courts from the language that states that the records maintained in their offices are eligible for expungement. The reason for this deletion is that we are seeking to seal the court records rather than expunge them.

Proposed amendment 3 on Page 1, Line 27, is to strike the first sentence in subsection (4). This proposed amendment would eliminate the requirement that the court records be sealed **upon receipt of a Petition** for expungement. This would allow the court records to remain open until the court has made a determination on the Petition and issued an Order granting or denying the Petition. By striking this sentence, it would eliminate the clerk of court that has jurisdiction from having to seal the record **before** a determination that the records are eligible for this procedure has been issued. If the court denies the request, the clerks would then have to unseal the records.

Proposed amendment 4 on Page 1, Line 29 inserts the language that the clerk of court **that has jurisdiction** shall seal the records. This language allows the clerks of court in all courts that have jurisdiction to be allowed to seal the records upon issuance of an order granting the Petition.

Proposed amendments 5 and 6 on Page 2, Lines 5 and 6, insert the language "except those records kept by the clerk of court that has jurisdiction" and the sentence "**The clerk of court that has jurisdiction shall seal all information in the court file and public access of the information may be obtained only by order of the court that has jurisdiction, upon good cause shown.**" This language exempts all clerks of

court having jurisdiction from having to expunge the court records and allows them to seal the records. Once sealed, access of the information can only be obtained by order of the court for good cause shown.

The final proposed amendment contained in our first set of amendments, on Page 2, Line 12 is simply to change the effective date of this Bill from on passage and approval to October 1, 2009. In order to allow time to implement procedures to administrate the intent of this Bill, we believe that the October 1, 2009, effective date would be more conducive to the needs of our offices.

The second set of proposed amendments identified as HB176MACDC.2 simply strikes all of the current Section 1 of the Bill on Page 1, Lines 18 through 30 and on Page 2, Lines 1 through 7. This amendment would replace the current Section 1 and would designate certain criminal records as confidential criminal justice information. This amendment sets out the application, the eligible records, and the procedure just as the proposed amendments in the first amendment that I have just explained to you.

This proposed amendment is also asking to strike the current effective date of "on passage and approval" and change the effective date to October 1, 2009. Again, this additional time is needed to implement procedures to administrate this Bill.

Once again I want to reiterate that both the Montana Association of Clerks of District Court and the Montana Magistrates' Association are not taking a position on this Bill. We simply are presenting these amendments in order to allow our offices to adopt administrative procedures to implement the intent of the Bill and to avoid some possible unintended consequences.

Your support of **either** proposed amendment HB176MACDC.1 or HB176MACDC.2 is appreciated. Thank you.

**PROPOSED AMENDMENT TO HB 176**

**Requested by the Montana Association of Clerks of District Court**

**For the House Judiciary Committee**

**Prepared by Mary Phippen, Lobbyist for the Mt. Association of  
Clerks of District Court**

**January 16, 2009**

**1. Page 1, Line 25.**

**Following:** "corrections,"

**Insert:** "and"

**2. Page 1, Line 25.**

**Following:** "justice,"

**Strike:** "and a court"

**3. Page 1, Line 27.**

**Following:** "(4)"

**Delete:** "Upon receipt of a petition for expungement, the court shall direct the clerk of court to seal the records until the court makes a determination as to eligibility for expungement and rules on the petition."

**4. Page 1, Line 29.**

**Following:** "granted,"

**Insert:** the clerk of court that has jurisdiction shall seal the records and"

**5. Page 2, Line 5.**

**Following:** "agency"

**Insert:** ,except those records kept by the clerk of court that has jurisdiction,

**6.** Page 2, Line 6.

**Following:** "charged."

**Insert:** The clerk of court that has jurisdiction shall seal all information in the court file and public access of the information may be obtained only by order of the court that has jurisdiction, upon good cause shown.

**7.** Page 2, Line 12.

**Following:** "on"

**Strike:** "on passage and approval"

**Insert:** October 1, 2009.

**HB176MACDC.1**

PROPOSED AMENDMENT TO HB 176

Requested by the Montana Association of Clerks of District Court

For the House Judiciary Committee

Prepared by Mary Phippen, Lobbyist for the Mt. Association of  
Clerks of District Court

January 19, 2009

1. Page 1, Line 18.

**Following:** "1."

**Strike:** The remainder of line 18

**Insert: Designation of certain criminal records as confidential criminal justice information – application—eligible records—procedure—effect.** (1) A defendant may file a petition with a court to designate any records or entries relating to a charge as confidential criminal justice information, as defined in 44-5-103, if

(a) the charge is dismissed prior to or at trial; or

(b) the outcome of any court criminal proceeding results in an acquittal.

(3) The petition must be filed in the court that has jurisdiction over the offense in question.

(4) All records kept or maintained by an arresting agency, an agency that issued a citation, the department of corrections, the department of justice, and a court concerning an arrest, citation, trial, or other criminal court proceeding are eligible for designation as confidential criminal justice information.

(5) If designation as confidential criminal justice information is granted, the clerk of court that has jurisdiction shall seal all information in the court file and public access of the information may be obtained only by order of the court that has jurisdiction, upon good cause shown. The court shall forward a copy of the order designating the records confidential criminal justice information to the department of justice. Upon receipt of the court order, the department shall designate the pertinent records as confidential criminal justice information.

1. Page 1, Line 19 through Line 30.

**Strike:** Line 19 through Line 30 in their entirety.

2. Page 2, Line 1 through Line 7.

**Strike:** Line 1 through Line 7 in their entirety.

3. Page 2, Line 12.

**Following:** "on"

**Strike:** "on passage and approval"

**Insert:** October 1, 2009